

**FIRE**Foundation for Individual
Rights and Expression

July 6, 2023

Via CM/ECF

Mark J. Langer, Clerk of Court
United States Court of Appeals
For the District of Columbia Circuit
333 Constitution Ave., NW
Washington, DC 20001

Re: *Woodhull Freedom Foundation v. United States*, No. 22-5105

Dear Mr. Langer,

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellants hereby submit as supplemental authority the Supreme Court's decision in *303 Creative LLC v. Elenis*, 2023 WL 4277208 (2023).

In holding that the First Amendment prohibits enforcement of public accommodations laws to require a website design business to transmit speech that violated the owner's personal convictions, the Court held in *303 Creative* that regulating website design restricts "pure speech," 2023 WL 4277208 *8, that speakers "do not shed their First Amendment protections by employing the corporate form," *id.* at 12, and that their expressive activities cannot be recast as "conduct," *id.* at 13. The Court also rejected the state's claim that regulating website design involves only an "incidental" regulation of speech. *Id.* at 14.

The law at issue in this case, FOSTA, prohibits "own[ing], manag[ing], or operat[ing] an interactive computer service," essentially with bad intent. Appellant's Reply at 10-11. Argument Tr. 9-10, 20-22, 43-46, 48-49, 58-61. The holding in *303 Creative* supports Appellants' arguments that regulation of the online medium inherently targets speech presumptively protected by the First Amendment. Appellants' Br. 23-28. It likewise undermines the government's argument that FOSTA's regulation of owning, managing, or operating an interactive computer service "is not a direct regulation of speech" and only prohibits a "course of conduct." DOJ Br. 50-51.

Mark J. Langer, Clerk of Court

July 6, 2023

Page 2 of 2

Respectfully submitted,

/s/ Robert Corn-Revere

ROBERT CORN-REVERE

bob.corn-revere@thefire.org

FOUNDATION FOR INDIVIDUAL RIGHTS
AND EXPRESSION

700 Pennsylvania Avenue SE, Suite 340

Washington, DC 20003

DAVID GREENE

AARON MACKEY

CORYNNE MCSHERRY

davidg@eff.org

amackey@eff.org

corynne@eff.org

ELECTRONIC FRONTIER FOUNDATION

815 Eddy Street

San Francisco, CA 94109

LAWRENCE G. WALTERS

larry@firstamendment.com

WALTERS LAW GROUP

195 W. Pine Ave.

Longwood, FL 32750-4104

DAPHNE KELLER

daphnek@law.stanford.edu

STANFORD CYBER POLICY CENTER

616 Jane Stanford Way #E016

Stanford, CA 94305

Attorneys for Appellants

cc: all counsel (via CM/ECF)